IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/07/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
AND
The Hon'ble Mr. Justice S. SARDAR ZACKRIA HUSSAIN

A.S.No. 996 of 1989
and
Cross Appeal in Appeal Suit No. 996 of 1989

1. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Madras-600 002.

2. The Superintending Engineer,
Villupuram Electricity Distribution
Circle, Tamil Nadu Electricity Board,
Villupuram-605 602.

3. The Executive Engineer,
Distribution,
Tamil Nadu Electricity Board,
Villupuram-605 602.

4. The Assistant Executive Engineer,
Town/Distribution,
Tamil Nadu Electricity Board, .. Appellants/Respondents
Villupuram. in Cross Appeal.

-VS-

Govindasamy Naidu. ..Respondent/Cross Objector.

Appeal Suit is filed under Section 96 of Code of Civil Procedure and
Cross Appeal under Order 41 Rule 22 of the Code of Civil Procedure, against
judgement and decree passed in O.S.No. 110 of 198 7 dated 26-7-1989 on the
file of Subordinate Judge, Villupuram.

!For appellants:- Mr. S. Rajeswaran for TNEB.

^For respondent:-Mr.K.K. Senthil for M/s.V.Venkataswami

:JUDGEMENT

(Judgement of the Court was delivered by P. Sathasivam, J.,)

Defendants in O.S.No. 110 of 87 on the file of Subordinate Judge, Villupuram are appellants in the above appeal. The plaintiff/respondent herein filed the suit for recovery of a sum of Rs.63,800 /- as damages together with interest. Since the learned Subordinate Judge granted a decree for damages to an extent of Rs.25,300/- with proportionate cost, the defendants have filed the present appeal. For the disallowed claim, the plaintiff/respondent has filed Cross Appeal.

2. For convenience the parties are described as arrayed before the Court below. The case of the plaintiff is briefly stated hereunder:
According to him, he is an agriculturist owning more than 25 acres of land in Siruvakkur village, Villupuram Taluk, South Arcot District. He installed a 5 H.P. Motor and pumpset in the well and the same was operated by electricity after getting permission from the Electricity Board. He was given connection to the pumpset on 26-8-1971 and his service connection number was 17. The plaintiff was regular in payment of electricity charges and strictly adhering to the Rules and Regulations framed by the Tamil Nadu Elec tricity Board. The agreement entered into between the Tamil Nadu Electricity Board and the plaintiff shows that the consumer provides for the ownership of the meter box and fuse carriers being retained with the department. The consumer cannot have any access to the same excepting in the presence of the staff of the Tamil Nadu Electricity Board. In August, 1977 there was a theft and the meter and fuse carrier were damaged and the door was missing. A complaint was duly lodged with the police and the Tamil Nadu Electricity Board, and the Wireman was also personally informed of the mishap. Instead of trying to investigate into the matter and also repairing the damage, the fourth defendant started taking a very hostile attitude and even went to the extent of accusing the plaintiff of having tampered with the meter and also charging him with theft of electricity. Proceedings under Section 39 (44) of the Electricity Act and Section 379 I.P.C. were initiated against the plaintiff in the Court of Additional Judicial Second Class Magistrate, Villupuram and the same ended in acquittal. Not being satisfied with the criminal proceedings, the defendants on 15-10-1977 disconnected the electric supply. Such action besides being unwarranted and was mala fide and beyond the powers of the Electricity Board and quite contrary to the Rules and Regulations.

3. Since the plaintiff's main aim at the relevant time was to see that the electricity connection was restored to him, he filed a suit in O.S.No. 1424 of 1981 on the file of District Munsif, Villupuram for the relief of re-connection and the same has been decreed by the learned District Munsif on 31-10-1985. The appeal as against the said decree in A.S.No. 157/85 was also dismissed on 18-8-86. Thereafter, in the month of November, 1986, the service connection was restored. The plaintiff had been suffering from damage and loss. Since his service connection had been disc onnected, he was not able to use the meter from the date of dis-connection till the date of re-connection. In the earlier suit itself, the plaintiff has reserved his rights to file separate proceedings for recovery of damages from the period of disconnection, namely, 15-10-1977 till the date of reconnection. The plaintiff issued a legal notice to be sent under Section 80 C.P.C. on 17-7-1980 and since there

was no compliance, he was obliged to file the earlier suit which reserves his right to file the present suit.

4. On behalf of the defendants, the second defendant/Superintending Engineer, Tamil Nadu Electricity Board, Villupuram has filed a written statement disputing various averments made in the plaint. It is admitted that the plaintiff is one of the consumer of the Board and his service number is 17. Since the plaintiff himself has admitted the theft of energy and the carrier was damaged and the door was missing, it is the bounden duty of the consumer to intimate the same to the Board in writing. The plaintiff has not given any complaint either in writing or orally. If really any information regarding the same was given, the Board would have taken necessary steps to rectify the same. As per Rule 10 of B.P.780 dated 21-6-1977, the consumer shall be fully responsible for the safety of the property of the Board on the consumer's premises. Admittedly, the Board's property which was in the plaintiff's premises got damaged, hence the penalty demanded by the Board is legal, valid and enforceable.

5. Due to the damage to the Board's property and also for theft of energy a criminal complaint was lodged by the departmental staff as per the rules and regulations. The criminal proceedings ended in acquittal giving benefit of doubt in favour of the plaintiff.

6. The penalty levied by the Board was for causing damage to the Board's property. Even the penal amount was reduced to the extent of Rs.1000/- by the Superintending Engineer. The plaintiff was not interested in minimising the alleged loss, however filed the suit against the Board without paying the amount. For non-payment of penalty amount, his service was dis-connected. The Board is entitled to do the same as per the rules and regulations. The levy of penalty is within the powers of the Board. As per the orders of the Courts, his service connection was restored. The plaintiff has not suffered any damage. Even otherwise, if really any damage has been caused to the plaintiff due to the act of the defendant, he ought to have claimed the same in the prior suit itself. Since the plaintiff had omitted to include the same in the prior suit, the suit now filed is clearly barred by limitation. The plaintiff has not given any notice under Section 80 C.P.C. On this ground, the suit is liable to be dismissed.

7. The defendants and their officers are protected under Section 56 of the Indian Electricity Act, 1910. The plaintiff is not entitled to maintain the suit against the Board and its officers who acted in good faith under the provisions of the Act. The plaintiff is not entitled to claim any amount from the Board and in any event the amounts claimed in the plaint is highly excessive.

8. With the above pleadings, the plaintiff himself was examined as P.W.1, besides marking Exs. A-1 to A-10. On the side of the defendants, their Junior Engineer was examined as D.W.1 and Exs. B-1 and B-2 were marked in support of their defence. The learned Subordinate Judge, after framing necessary issues and after considering the oral and documentary evidence, passed a decree for damages to the extent of Rs.25,300/- with proportionate

cost and dismissed the suit in respect of the balance amount and the other claim. As said earlier, questioning the said decision, the defendants have preferred the above appeal. Regarding the disallowed claim, the plaintiff has filed the Cross Objection in this appeal.

9. Heard Mr. S. Rajeswaran, learned counsel for the appellants-Tamil Nadu Electricity Board and Mr. Senthil, learned counsel for the respondent.

10. The points that arise for consideration in this Appeal are,
(i) Whether the plaintiff is entitled to damages at the hands of the Tamil Nadu Electricity Board and the learned Subordinate Judge is right in granting the decree to the extent of Rs.25,300/with proportionate cost? and

(ii) Whether the plaintiff is entitled to the entire suit amount as claimed?

11. There is no dispute that the plaintiff is one of the consumers of the Tamil Nadu Electricity Board and his service connection Number is 17. He obtained the connection on 26-8-1971 for the purpose of irrigation of his lands. Even according to him, in the month of August, 1977 there was an instance of theft of electric energy, damage to the meter, and fuse carriers and missing of the Board. Though the plaintiff has claimed that a complaint was duly lodged with the police and Tamil Nadu Electricity Board and a Wire-man of the Board was informed about the same, admittedly, no written complaint was made either to the higher officers of the Board or even to the lower level officer, namely, the fourth defendant. In the light of the assertion made by the defendants in their written statement that no written complaint was made by the plaintiff regarding the same, the claim of the plaintiff that the same was informed to the Wire-man of the Board cannot hold water. As rightly claimed by the Board, if there was theft of energy or damage to the fuse carrier or missing of meter board, as a responsible consumer, it was the bounden duty of the plaintiff to intimate the same to the Board or its officers in writing. In this regard, it is relevant to point out that as per Board's Rule 10 of B.P.780 dated 21-6-1977, the consumer shall be fully responsible for the safety of the property of the Board on his (consumer's) premises. Further, in the event of cause of any loss or damage to the Board's property by any act, neglect, or default of the consumer, his servants, or persons employed by him due to any reason other than force major conditions, the consumer shall compensate the Board for the cost of necessary repairs or replacements, as may be indicated by the Board and in addition he shall pay penalties prescribed or lawful dues to the Board for unauthorised interference with the Board's property. Admittedly, the Board's property, which was in the plaintiff' s premises, got damaged.

12. It is seen that for the damage to the Board's property as well as theft of energy, a criminal complaint was lodged by the departmental staff as per the rules and regulations. No doubt, the criminal case ended in acquittal and the order in C.C.No. 9/78 dated 21-7-78 of the learned II Additional Judicial Second Class Magistrate, Villupuram has been marked as Ex. A-1. The perusal of the said order shows that the plaintiff/accused was acquitted by giving benefit of doubt in his favour. It is not in dispute that merely because a consumer was acquitted in a criminal case, it cannot be said that the Board or

its officers have no power to impose penalty or levy damage on him for the loss caused to the Board's property. As per Board's proceedings, the consumer-plaintiff alone is responsible for any damage to the Board's properties. As such, the disconnection without prior notice cannot be termed as a violation of the Board's proceedings on the part of the defendants. Like-wise, the mere acquittal of the plaintiff in the criminal case will not absolve him from the liability of paying loss sustained by the Board.

13. Apart from the factual details referred to above, it is not in dispute that it is the responsibility of the consumer to protect the properties of the Electricity Board such as meter, meter board, etc. Even in the evidence the plaintiff as P.W.1 has stated that he has not made any complaint to the authorities regarding the damage to the meter. The Junior Engineer, examined as D.W.1 on the side of the defendants, has deposed that,

(VERNACULAR PORTION DELETED)

The above statement of D.W.1 makes it clear that on the date of inspection of the service connection of the plaintiff, the squad noticed removal of the seal box on the meter, damage to the same, opening of the meter box and damage to the Board etc. As already referred to by us, Rule 10 B.P.780 dated 21-6-77 fixes responsibility on the consumer for the safety of the property of the Board on the consumer's premises and in the event of any loss or damage caused to them by any act, neglect, or default of the consumer, his servants, or persons employed by him, the consumer shall compensate the Board for the cost of necessary repairs or replacements. In addition to that, he is liable to pay penalty prescribed or lawfully due to the Board for the unauthorised interference with the Board's property. In such a circumstance, in view of the specific provisions referred to above and in the light of the admitted factual position, merely because the criminal case launched against the plaintiff ended in acquittal, it will not absolve him from the liability of paying loss sustained by the Board, and the officers of the Board are equally entitled to take other appropriate action like disconnection of power supply, recovery of damages for the loss sustained to them. In this regard, Mr. S. Rajeswaran, learned counsel appearing for the Electricity Board by drawing our attention to Section 56 of the Indian Electricity Act, 1910, would contend that inasmuch as the actions initiated by the officers of the Electricity Board were in good faith, no proceeding will lie against them. The relevant provision is as follows:

"56. Protection for acts done in good faith
(1) No suit, prosecution or other proceeding shall lie against any public officer or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

(2) No Court shall take cognisance of an offence under this Act, by a public officer except with the sanction-

(a) in the case of a person employed in connection with the affairs of the union, of the Central Government; and

(b) in any other case, of the state Government."

The application of the above provision depends upon the complaint made in the suit. If there is specific allegation with supporting materials that the action taken by the officers of the Board was not in good faith, the consumer is entitled to proceed his suit. Here, in the case on hand, except a bald statement that the disconnection of power supply was motivated, there is no specific allegation of complaint. Hence, we are satisfied that the same has not been substantiated by acceptable oral and documentary evidence. Considering the evidence available, namely, that at the time of inspection the officers of the Board noticed the meter box kept open, meter seal tampered, etc., they proceeded against the consumer-plaintiff by initiating criminal proceedings as well as appropriate action under the rules and regulations of the Board. In such a circumstance, their action cannot be faulted with; and similarly the same cannot also be construed as a mala fide action and not in good faith. We are satisfied that the materials placed would clearly show that the actions taken by the officers of the Electricity Board were in good faith and they are not entitled for protection in terms of Section 56 of the Indian Electricity Act, 1910.

14. It is also relevant to note that as per section 81 of the Electricity (Supply) Act, 1948, all members and officers and other employees of the Electricity Board are public servants within the meaning of Section 21 of the Indian Penal Code, 1860. Section 81 of the said Act is extracted hereunder:

"81. Members and officers and servants of the Board to be public servants All members and officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860."

The above provision makes it clear that the members and officers and other employees of the Board while acting or discharging their duties in pursuance of the provisions of the Electricity (Supply) Act, 1948 are deemed to be public servants within the meaning of Section 21 of the Indian

Penal Code. It is clear that the officers who visited the premises of the plaintiff for inspecting the service connection No.17 are public servants within the meaning of Section 21 I.P.C. and inasmuch as after noticing certain damages to their meter seal, meter box, etc., they proceeded in terms of the rules and regulations of the Board in good faith. Their action cannot be construed as a mala fide one as claimed by the plaintiff. In the light of the provisions referred to above, and the safe guard provided, we hold that the defendants and their officers acted in good faith, and, therefore, the plaintiff is not entitled to damages. The learned Subordinate Judge has not considered all these material aspects and committed an error in holding that the action taken by the officers of the Board was not in good faith. In the light of our conclusion which was made on merits, there is no need to go into the other aspects , namely, limitation, and non-compliance of notice under Section 80 C.P.C., as well as the quantum of damages.

15. In the light of what is stated above, the judgement and decree of the learned Subordinate Judge dated 26-7-1989 made in O.S.No. 110 of 1987 is set aside. The Appeal is allowed with costs. In view of the above conclusion, the plaintiff is not entitled to any further amount or additional amount as claimed in the Cross Objection; accordingly the Cross Objection is dismissed without costs.

R.B.
Index:- Yes.
Internet:- Yes.

To:-
1. The Subordinate Judge, Villupuram (with records).

2. The Record Keeper, V.R. Section, High Court, Madras.